

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRY LIN KLOTZ, et al.,

Plaintiffs,

Case No. 1:17-cv-608

v.

INGHAM COUNTY,

HON. JANET T. NEFF

Defendant.

/

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 regarding Plaintiffs' claims that conditions at the Ingham County Jail violate their rights under the Eighth Amendment (ECF No. 1). Defendant filed a motion for summary judgment, arguing that the only remaining Plaintiff, Terry Klotz, failed to exhaust his available administrative remedies as to his remaining claims, which warrants dismissal of his claims (ECF No. 22). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that Defendant's motion for summary judgment be granted and this matter terminated (ECF No. 25). The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff's sole argument is that he is entitled to an entry of default against Defendant because Defendant failed to timely answer Plaintiffs' complaint; thus, Defendant's "sham" pleadings should be stricken from the record and the R&R should be "denied/overturned" (ECF No. 26 at PageID.130-32). Plaintiff's argument is without merit.

The Court granted Plaintiff's motion to proceed in this matter *in forma pauperis* by order entered August 30, 2017; the Order stated that after a review of the case, "the Court will determine whether dismissal or service of process is appropriate, and will fashion an order accordingly" (ECF No. 9 at PageID.30-31).

The Court subsequently entered an Order for Partial Dismissal and Partial Service providing in part that Defendant was required to file an appearance within 60 days after a waiver of service was sent (ECF No. 14 at PageID.51). Waiver of Service was sent to Defendant on September 26, 2017 (ECF No. 16). Defendant timely filed appearances of counsel with this Court on October 11, 2017. With regard to Defendant's answer to the complaint, the Order for Partial Dismissal and Partial Service stated: "Until so ordered by the Court, no Defendant is required to file an answer or motion in response to the complaint, and no default will be entered for failure to do so" (ECF No.14 at PageID.51, citing 42 U.S.C. § 1997e(g)(1)).

The Court thereafter issued a Case Management Order, likewise stating:

By virtue of 42 U.S.C. § 1997e(g)(1), no defendant is required to file a response to the complaint. The only action required of any defendant is the filing of an appearance within the time allowed by the Court's order of service. *No default will be entered against any defendant for exercising the right under section 1997e(g)(1) not to respond to the complaint.*

(ECF No. 17 at PageID.54, emphasis added).

Contrary to Plaintiff's argument, he is not entitled to a default or to have Defendant's pleadings stricken. Plaintiff's reliance on the general rules for responsive pleadings articulated in

the Federal Rules of Civil Procedure is misplaced. Defendant complied with above-referenced court orders and authority cited therein. Plaintiff has failed to demonstrate any factual or legal error in the Magistrate Judge's analysis or conclusion. Plaintiff's objections are denied.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Since all claims in this case have been resolved (see ECF No. 10), a Judgment will be entered consistent with this Opinion and Order. *See FED. R. CIV. P. 58.* Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 26) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 25) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 22) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: September 5, 2018

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge